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**In The United States Patent and Trademark Office
On Appeal From The Examiner To The Board
of Patent Appeals and Interferences**

In re Application of: Shmuel Shaffer et al.
Serial No.: 09/766,424
Filing Date: January 18, 2001
Group Art Unit: 2642
Examiner: Rasha S. Al Aubaidi
Title: APPARATUS AND METHOD FOR ALLOCATING
CALL RESOURCES DURING A CONFERENCE

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Willie Jiles

Willie Jiles

Date: June 22, 2005

Dear Sir:

Appeal Brief

Appellants have appealed to the Board of Patent Appeals and Interferences from the decision of the Examiner mailed December 28, 2004, finally rejecting Claims 1-40, all of which are pending in this case. Appellants filed a Notice of Appeal on April 22, 2005. Appellants respectfully submit this Appeal Brief with the statutory fee of \$500.00.

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Real Party in Interest

Cisco Technology, Inc. currently owns this application, as reflected in an Assignment recorded January 18, 2001, in the Assignment Records of the United States Patent and Trademark Office at Reel 011483, Frames 0852-0855.

Related Appeals and Interferences

No known appeals, interferences, or judicial proceedings are related to or will directly affect or have a bearing on the Board's decision on this appeal. The Board's decision on this Appeal will not affect any known appeals, interferences, or judicial proceedings.

Status of Claims

Claims 1-40 are pending in this application and all stand rejected under a final Office Action mailed December 28, 2004 (the "Final Office Action"). Appellants present Claims 1-40 for appeal. The attached Claims Appendix shows all pending claims.

Status of Amendments

All amendments submitted by Appellants were entered by the Examiner before the issuance of the Final Office Action.

Summary of Claimed Subject Matter

Referring to Figure 1, a communication system 10 for allocating call resources 16 and 18 during a conference call includes media gateway 12, call manager 14, call resources 16 and 18, and clients 22a and 22b coupled to network 20. System 10 further includes gateway 26 coupling network 20 to network 28. Clients 24a and 24b couple to network 28 and communicate with clients 22 via gateway 26. Clients 22 and 24, and gateway 26 may generally be referred to as clients 22. In one embodiment, media gateway 12 may transfer a conference call being conducted on call resource 16 to call resource 18 without terminating the conference call between two or more clients 22 and/or 24. *Page 7, lines 2-21.*

Call resources 16 and 18 couple to network 20 at different physical locations. Call resources 16 and 18 include multiple media processors to exchange and mix media streams associated with clients 22 participating in a conference call over network 20. Each media processor may be operable to conduct at least one conference call. In one embodiment, call resources 16 and 18 receive media streams generated by clients 22 via media gateway 12, encode, decode, and/or transcode the media streams into a proper format using at least one of the media processors, and generate a number of mixed media streams for communication back to clients 22 via media gateway 12. The media streams received by call resources 16 and 18 and the mixed media streams communicated by call resources 16 and 18 may be in the form of media encoded in packets for communication using network 20. Clients 22 may receive the packets of information from media gateway 12 for presentation to conference participants. *Page 10, lines 1-21.*

In the illustrated embodiment, media gateway 12 acts as a programmable flow controller for clients 22 and call resources 16 and 18. In order to establish a conference call, clients 22 communicate media to media gateway 12 over network 20. Media gateway 12 receives the media and may determine how to utilize call resources 16 and 18 based on the availability of call resources 16 and 18, and the number of participants in the conference call. For example, media gateway 12 may determine that call resource 16 is available to conduct the conference call between clients 22. Media gateway 12 then communicates the media from clients 22 to call resource 16. Call resource 16 mixes the media and communicates the mixed media to media gateway 12. Media gateway 12 receives the mixed media and communicates the mixed media to clients 22 using network 20 to establish the conference

call. In this example, media gateway 12, rather than call resources 16 and 18, controls communication of media during the conference call. *Page 11, line 20 – Page 12, line 7.*

During use, media gateway 12 also performs allocation of call resources 16 and 18 when multiple conference calls occur over network 20. In a conventional communication network, the media processors in call resources 16 and 18 may conduct one conference call between a maximum number of participants. In the illustrated embodiment, media gateway 12 may allocate call resources 16 and 18 such that the media processors in call resources 16 and 18 may conduct multiple conference calls if the total number of participants in the multiple conference calls is less than or equal to the maximum number of participants. *Page 12, line 22 – Page 13, line 2.*

Referring to Figure 2, media gateway 12 may transfer a conference call between call resources 16 and 18 without notifying clients 22 that the transfer occurred and without the call participants being aware of the transfer. For example, call resource 16 may conduct a conference call over network 20 between clients 22. Media gateway 12 detects a transfer condition, such as a request to add an additional client to the conference call, a request by one of the participating clients to leave the conference call or initiation of a new conference call on call resource 16, and identifies call resource 18 as being available to conduct the conference call. Media gateway 12 duplicates first media 32 to create second media 36. Media gateway 12 then communicates second media 36 to call resource 18. *Page 14, lines 5-19.*

Call resource 16 mixes and processes first media 32 and call resource 18 mixes and processes second media 36. Call resource 16 communicates first mixed media 34 to media gateway 12 and call resource 18 communicates second mixed media 38 to media gateway 12. Media gateway 12 communicates first mixed media 34 to clients 22 using media 30 to maintain the conference call. Media gateway 12 modifies synchronization information associated with second mixed media 38 to match synchronization information associated with first mixed media 34. Once second mixed media 38 has been modified, media gateway 12 determines if the modified second mixed media is valid. *Page 14, lines 20-31.*

In one embodiment, media gateway 12 receives a request by one of clients 22 to join a conference call that is conducted on call resource 16. If call resource 16 is unavailable to conduct the conference call with the additional participant, media gateway 12 transfers the

conference call from call resource 16 to call resource 18. Media gateway 12 proceeds to transfer the conference call as described in the above example. In order to mask the transition between call resources 16 and 18, media gateway 12 plays a recorded prompt to users at clients 22 indicating that a new client has been added to the conference call. Media gateway 12 plays the prompt after it terminates the conference on call resource 16, eliminating first mixed media 34 communicated from call resource 16 to clients 22, but before it communicates the second mixed media from call resource 18 to clients 22 via media 30. Any glitches during the transfer, e.g., losing media, may be eliminated or reduced because clients 22 cannot receive second mixed media from call resource 18 during the prompt. *Page 15, lines 12-31.*

Referring to Figure 3, call resource 16 includes media processors 40, control module 42, network interface 44, and memory 46. Referring to Figure 4, media gateway 12 includes processing module 50, memory 52 and network interface 54. In operation, processing module 50 determines if media processors 40 in call resources 16 and 18 are available to conduct a conference call. When processing module 50 receives a request to initiate a conference call, processing module 50 determines what media processors 40 are available in call resources 16 and 18. Once processing module 50 locates an available media processor, processing module 50 communicates the media streams from clients 22 and 24 to the available media processor and receives mixed media streams from the media processor for communication to clients 22. Clients 22, therefore, are unaware of the call resource being used to conduct the conference call since clients 22 communicate directly with media gateway 12. *Page 19, line 1 – Page 20, line 11.*

During a conference call, processing module 50 may transfer the conference call between media processors 40 in call resources 16 and 18 without suspending or effecting communication between clients 22. In one embodiment, network 20 may be a packet-based network such as an IP network. Network 20 may further support packet switching in which the media streams communicated by clients 22 are broken down into packets. The packets may contain a payload (the data to be transmitted), an originator, a destination and synchronization information. In one embodiment, the synchronization information may include sequence numbers and timestamps for the packets of media being communicated,

and/or any other suitable information that may be used to assemble the packets in the correct order. *Page 21, lines 14-28.*

Referring to Figure 6, a flow diagram of a method for conducting a transfer of a conference call between call resources is illustrated. In step 90, media gateway 12 may establish the conference call on call resource 16. Media gateway 12 determines in step 92 if the conference call should be transferred to another call resource. If media gateway 12 determines that no transfer is necessary, media gateway 12 continues to conduct the conference call on call resource 16 in step 94. If media gateway 12 determines that the conference call should be transferred, media gateway 12 determines if the number of clients participating in the conference call has changed in step 96. *Page 31, lines 16-28.*

If the number of clients did change, media gateway 12 determines if an additional client joined the conference call in step 98. If one of the participants left the conference call, media gateway 12 plays a recorded prompt to users at clients 22 during the transfer in step 100. The prompt indicates that one of the participants has left the conference call. If an additional client requested to join the conference call, media gateway 12 determines if call resource 18 is available to conduct the conference call with the additional participant in step 102. If call resource 18 is not available to conduct the conference call, media gateway 12 plays a recorded prompt to a user at the additional client in step 104. The prompt asks the user to make another request to join the conference call because call resources 16 and 18 were unavailable when the first request was made. If call resource 18 is available to conduct the conference call and an additional client has joined the conference call, media gateway 12 plays a recorded prompt to users at clients 22, 24, 26 and 28 in step 106. The prompt indicates that an additional client has joined the conference call. *Page 31, line 28 – Page 32, line 20.*

If the number of clients participating in the conference call did not change, media gateway 12 determines if there is a period of silence in the conference call in step 108. If media gateway 12 has not detected a period of silence, media gateway 12 determines if the delay for first mixed media 34 generated by call resource 16 is synchronized with the delay for second mixed media 38 generated by call resource 18 at step 109. In an alternative embodiment, media gateway 12 may determine if the delays for first and second mixed media 34 and 38 match in addition to or in lieu of playing a prompt or detecting a period of silence

in the conference call. If the delays for first and second mixed media 34 and 38 do not match, media gateway 12 continues the conference call on call resource 16 at step 110. If media gateway 12 detects a period of silence at step 108, or determines that the delay for first mixed media 34 matches the delay for second mixed media 38 at step 109, media gateway 12 transfers the conference call from call resource 16 to call resource 18 at step 112. *Page 32, line 21 – Page 33, line 12.*

Ground of Rejection for Review on Appeal

Appellants request that the Board review the Examiner's rejection of Claims 1-2, 4, 8-9, 11, 13, 21-22, 24, 28-29-31, 33 and 37-40 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,563,882 issued to Bruno et al. ("*Bruno*"). Furthermore, Appellants request that the Board review the Examiner's rejection of Claims 3, 12, 23 and 32 under 35 U.S.C. § 103(a) as being unpatentable over *Bruno* in view of U.S. Patent No. 4,477,895 issued to Casper et al. ("*Casper*"). Appellants also request that the Board review the Examiner's rejection of Claim 5, 14, 25 and 34 under 35 U.S.C. § 103(a) as being unpatentable over *Bruno* in view of U.S. Patent No. 5,467,342 issued to Logston et al. ("*Logston*"). Moreover, Appellants request that the Board review the Examiner's rejection of Claim 6, 15, 26 and 35 under 35 U.S.C. § 103(a) as being unpatentable over *Bruno* in view of U.S. Patent No. 6,081,513 issued to Roy ("*Roy*"). In addition, Appellants request that the Board review the Examiner's rejection of Claims 7, 10, 16, 27 and 36 under 35 U.S.C. § 103(a) as being unpatentable over *Bruno* in view of U.S. Patent No. 5,625,407 issued to Biggs et al. ("*Biggs*"). Moreover, Appellants request that the Board review the Examiner's rejection of Claims 17-18 under 35 U.S.C. § 103(a) as being unpatentable over *Bruno*. Furthermore, Appellants request that the Board review the Examiner's rejection of Claims 19 and 20 under 35 U.S.C. § 103(a) as being unpatentable over *Bruno* in view of *Biggs* and in further view of U.S. Patent No. 6,275,575 issued to Wu ("*Wu*").

Argument

The Examiner's rejections of Claims 1-40 is improper, and the Board should withdraw the rejections for the reasons given below.

I. The Examiner's Rejection of Claims 1, 8-9 and 21, 28-30 and 37-39 Under 35 U.S.C. § 103(a) Over *Bruno* is Improper

As noted above, the Examiner rejects Claims 1, 8-9 and 21 under 35 U.S.C. §103(a) as being unpatentable over *Bruno*. In addition, the Examiner references an August 13, 2003 Office Action which rejects Claims 30 and 39 under the same rationale used to reject Claim 1, Claims 28 and 37 under the same rationale used to reject Claim 8 and Claims 29 and 38 under the same rationale used to reject Claim 9. *See* Final Office Action, pages 6-7.

In order to establish a *prima facie* case of obviousness, three requirements must be met: (1) there must be some suggestion or motivation, either in the references themselves or in the knowledge available to one skilled in the art, to modify a reference or combine multiple references; (2) there must be a reasonable expectation of success; and (3) the prior art reference (or combination of references) must teach or suggest all of the claim limitations. M.P.E.P. § 2143.

In the present case, a *prima facie* case of obviousness cannot be maintained for at least two reasons. First, there is no motivation or suggestion to modify *Bruno*. Second, the proposed modification would render *Bruno* unsatisfactory for its intended purpose and would change its principle of operation.

A. No Motivation or Suggestion to Modify *Bruno*

The M.P.E.P. sets forth a strict legal standard for finding obviousness based on a combination of references. According to the M.P.E.P., "[o]bviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either

explicitly or implicitly in the references themselves or in the knowledge [that was] generally available to one of ordinary skill in the art" at the time of the invention. M.P.E.P. 2143.01. The "fact that references can be combined or modified does not render the resultant combination [or modification] obvious unless the prior art also suggests the desirability of the combination" or modification. *Id.* (emphasis in original).

The governing Federal Circuit case law makes this strict legal standard even more clear. According to the Federal Circuit, "a showing of a suggestion, teaching, or motivation to combine . . . prior art references is an essential component of an obviousness holding." *In re Sang-Su Lee*, 277 F.3d 1338, 1343 (Fed. Cir. 2002) (quoting *Brown & Williamson Tobacco Corp. v. Philip Morris Inc.*, 229 F.3d 1120, 1124-25 (Fed. Cir. 2000)). "Evidence of a suggestion, teaching, or motivation . . . may flow from the prior art references themselves, the knowledge of one of ordinary skill in the art, or, in some cases, the nature of the problem to be solved." *In re Dembiczak*, 175 F.3d 994, 999 (Fed. Cir. 1999). However, the "range of sources available . . . does not diminish the requirement for actual evidence." *Id.* In *In re Dembiczak*, the Federal Circuit reversed a finding of obviousness by the Board of Patent Appeals and Interferences, explaining that proper evidence of a teaching, suggestion, or motivation to combine is essential to avoid impermissible hindsight reconstruction of an Appellant's invention:

Our case law makes clear that the best defense against the subtle but powerful attraction of hind-sight obviousness analysis is *rigorous application of the requirement for a showing of the teaching or motivation to combine prior art references*. Combining prior art references without evidence of such a suggestion, teaching, or motivation simply takes the inventor's disclosure as a blueprint for piecing together the prior art to defeat patentability—the essence of hindsight.

¹ Note M.P.E.P. 2145(X)(C) ("The Federal Circuit has produced a number of decisions overturning obviousness rejections due to a lack of suggestion in the prior art of the desirability of combining references.").

175 F.3d at 999 (quoting *W. L. Gore & Assoc., Inv. v. Garlock, Inc.*, 721 F.2d 1540, 1553 (Fed. Cir. 1983)) (emphasis added).²

Claim 1 is directed to a method for allocating a plurality of call resources during a conference call and recites "conducting a conference call between three or more clients using a first call resource," "identifying a second call resource available to conduct the conference call" and "transferring the conference call from the first call resource to the second call resource." Claims 21, 30 and 39 each recites similar elements.

The Final Office Action states that *Bruno* does not teach transferring a conference call between three or more clients to a second call resource. See Final Office Action, page 2. However, the Final Office Action additionally states that:

Bruno teaches converting an on going point-to-point conference call to a multiparty bridged conference call without disturbing the on going conference call. That is, the reference teaches converting a conference call based on the needed resource. If a bridge becomes needed for a conference call, then the conferencing call is converted to a bridge. While not explicitly taught by Bruno, if in an on going multiparty bridged "conference call between three or more clients using [a] first call resource" (bridge), one of three clients drops out from the conference, then a bridge ("first call resource") will no longer be needed, and the remaining two clients may obviously be converted to the "direct" point-to-point connection. The advantage of doing so is to free the resource (bridge) when it is not needed.

Final Office Action, page 3.

First, *Bruno* does not teach converting a "conference call" based on a needed resource as the Final Office Action suggests. *Bruno* teaches a process for converting a point-to-point multimedia call to a bridged multimedia call. See *Bruno*, Abstract. A point-to-point call is an exchange of data between two users or participants. See *Bruno*, col. 2, lines 64-66. A conference call involves three or more users. See The American Heritage College

² See also *In Re Jones*, 958 F.2d 347, 351 (Fed. Cir. 1992) ("Conspicuously missing from this record is any evidence, other than the PTO's speculation (if that can be called evidence) that one of ordinary skill in the herbicidal art would have been motivated to make the modification of the prior art salts necessary to arrive at" the claimed invention.).

Dictionary, 3rd Edition, attached hereto in Appendix B. Thus, *Bruno* does not teach the conversion of any type of "conference call" as the Final Office Action suggests.

Second, as quoted above, to get around the fact that *Bruno* does not teach each claim element, the Final Office Action discusses a situation in which, in an ongoing multiparty bridged conference call between three or more clients, one party drops out and the two clients "may" be converted to a direct point-to-point connection. See Final Office Action, page 3. The Final Office Action admits that this scenario is not taught by *Bruno*. See *id.* Moreover, there is no suggestion or motivation anywhere in *Bruno* for this situation.

The Final Office Action's application of *Bruno* to some elements of Claim 1 alleges that *Bruno*'s conversion of a point-to-point call to a bridged call teaches some elements of Claim 1. See Final Office Action, page 2. For example, the Final Office Action alleges that in the *Bruno* conversion process the determination as to the availability of desired number of MCU ports teaches the claimed identification of a second call resource available to conduct the conference call. See *id.* Yet, as indicated above, in an attempt to get over the fact that *Bruno* does not teach each claim element, the Final Office Action turns around and discusses a hypothetical scenario not taught in any cited art in which a bridged conference call would be converted to a point-to-point call. This is discussed despite the Final Office Action's previous reliance on the conversion of a point-to-point call to a bridged call to teach some elements of Claim 1. Such a conversion of a bridged call to a point-to-point call would make irrelevant the Final Office Action's application of *Bruno* to other elements of Claim 1 as discussed above.

In addition, the Examiner is improperly using the Appellant's disclosure as a blueprint for modifying particular elements of *Bruno*. For example, in the Final Office Action, the Examiner states that if in an on going multiparty bridged conference call between three or more clients using a first call resource, one of three clients drops out from the conference, then a bridge will no longer be needed, "and the remaining two clients may obviously be converted to the 'direct' point-to-point connection." Final Office Action, page 2. However, as discussed above, the Final Office Action readily admits that this situation is not taught in

Bruno. The Final Office Action additionally states that "[t]he advantage of doing so is to free the resource (bridge) when it is not needed." *Id.* However, merely setting forth a hypothetical situation for which there is no support in the cited reference and additionally setting forth an alleged advantage to such situation does not satisfy the strict standards imposed by the M.P.E.P., the P.T.O. and the Federal Circuit for making a proper rejection under 35 U.S.C. § 103(a).

B. Proposed Modification Would Render *Bruno* Unsatisfactory for its Intended Purpose and Would Change its Principle of Operation

If a proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *See* M.P.E.P. § 2143.01. In addition, if the proposed modification would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. *See* M.P.E.P. § 2143.01.

Bruno is directed to a process for converting a point-to-point multimedia call to a bridged multimedia call. *See Bruno*, Abstract. As *Bruno* states, a point-to-point call is an exchange of data between two users or participants. *See, e.g., Bruno* col. 2, lines 64-66. The purpose of *Bruno* is to address problems specifically associated with "uninterruptedly accommodating the connection" of a third user's workstation to an "ongoing point-to-point call" between two other users. *Bruno*, col. 2, lines 25-32. For example, in order to include a third user on a call between two other users, "the existing point-to-point multimedia call between [the other two users] must first be terminated." *Id.*, col. 2, lines 32-34. Such a disruption causes problems and is both inconvenient and inefficient, particularly with respect to the two users on the existing point-to-point call. *See id.* col. 2, lines 37-55. *Bruno* specifically addresses these problems. *See, e.g., id.*, col. 2, lines 55-60. However, with the modifications proposed, the original call in *Bruno* would be a conference call between three or more users, which as discussed above is not taught. This proposed modification would render *Bruno* unsatisfactory for its intended purpose, because its intended purpose is to

convert a point-to-point multimedia call to a bridged multimedia call. In addition, the conversion process of *Bruno* of each embodiment disclosed includes steps specifically associated with a conversion from a point-to-point call, such as reconfiguring the point-to-point call by disconnecting the existing point-to-point configuration. Such steps would not apply if the original call were a multipoint conference call between three or more users. Thus, modifying *Bruno* in the manner suggested in the Final Office Action would make *Bruno* unsatisfactory for its intended purpose and would change its principle of operation.

Therefore, for at least the reasons given above, Appellants respectfully request reconsideration and allowance of Claims 1, 21, 30 and 39. Claims 8-9 depend from Claims 1, Claims 28-29 depend from Claim 21 and Claims 37-38 depend from Claim 30.

II. The Examiner's Rejection of Claims 2, 11, 22, 31 and 40 Under 35 U.S.C. § 103(a) Over *Bruno* is Improper

As noted above, the Examiner rejects Claim 2 under 35 U.S.C. §103(a) as being unpatentable over *Bruno*. In addition, the Examiner references an August 13, 2003 Office Action which rejects Claims 11, 22, 31 and 40 under the same rationale used to reject Claim 2. See Final Office Action, pages 6-7. Claims 2, 11, 22 and 31 depend from Claims 1, 10, 21 and 30, respectively. As discussed above, the Examiner's rejection of Claims 1, 21, 30 and 39 under 35 U.S.C. § 103(a) over *Bruno* is improper. In addition, as discussed below, the Examiner's rejection of Claim 10 under 35 U.S.C. § 103(a) over *Bruno* in view of *Biggs* is improper. Therefore, for the reasons given with respect to Claims 1, 10, 21, 30 and 39, Appellants respectfully submit that the Examiner's rejection of Claims 2, 11, 22, 31 and 40 under 35 U.S.C. § 103(a) over *Bruno* is improper.

In addition, Claim 2 recites "modifying synchronization information in the second mixed media stream to match synchronization information in the first mixed media stream." Claims 11, 22, 31 and 40 each recites similar elements. The Final Office Action suggests that *Bruno* discloses this element. See Final Office Action, page 4. However, *Bruno* discloses "reformatting [an] MCU-connected second bearer channel . . . into a format identical to that

of the first bearer channel, i.e., to a format for carrying audio, data and a small amount of video information." *Bruno*, col. 6, lines 49-53. "Once reformatting is complete, the information or data bit streams carried by the still-connected point-to-point first bearer channel are duplicated on the newly reformatted second bearer channel now connected between workstation 12a and MCU 36." *Id.*, col. 6, lines 53-57. The mere reformatting of a channel into a format for carrying audio, data and a small amount of video information does not disclose modifying synchronization information. In addition, duplicating a data bit stream carried by one channel on another channel does not disclose modifying synchronization information in a second mixed media stream to match synchronization information in a first mixed media stream. For example, there is no disclosure in *Bruno* that synchronization information is modified. Appellants note that to support a rejection based on disclosure of claim limitations, each and every limitation must be found in a reference, and "[t]he identical invention must be shown in as complete detail as is contained in the . . . claim." *Richardson v. Suzuki Motor Co.*, 9 USPQ 2d 1913, 1920 (Fed. Cir. 1989) (emphasis added).

Therefore, for at least these additional reasons, Appellants respectfully submit that the Examiner's rejection of Claims 2, 11, 22, 31 and 40 under 35 U.S.C. § 103(a) over *Bruno* is improper.

III. The Examiner's Rejection of Claims 4, 13, 24 and 33 Under 35 U.S.C. § 103(a) Over Bruno is Improper

As noted above, the Examiner rejects Claim 4 under 35 U.S.C. §103(a) as being unpatentable over *Bruno*. In addition, the Examiner references an August 13, 2003 Office Action which rejects Claims 13, 24 and 33 under the same rationale used to reject Claim 4. *See* Final Office Action, pages 6-7. Claims 4, 13, 24 and 33 depend from Claims 1, 10, 21 and 30, respectively. As discussed above, the Examiner's rejection of Claims 1, 21 and 30 under 35 U.S.C. § 103(a) over *Bruno* is improper. In addition, as discussed below, the Examiner's rejection of Claim 10 under 35 U.S.C. § 103(a) over *Bruno* in view of *Biggs* is improper. Therefore, for the reasons given with respect to Claims 1, 10, 21 and 30,

Appellants respectfully submit that the Examiner's rejection of Claims 4, 13, 24 and 33 under 35 U.S.C. § 103(a) over *Bruno* is improper.

In addition, Claim 4 recites "instructing the second call resource to adjust synchronization information in the second mixed media stream." Claims 13, 24 and 33 each recites similar elements. The Final Office Action suggests that *Bruno* discloses this element in the disclosure of reformatting a second bearer channel into a format identical to that of a first bearer channel. See Final Office Action, pages 4-5. However, merely reformatting a bearer channel into a format identical to another channel does not provide the necessary disclosure of instructing a second call resource to adjust synchronization information in a second mixed media stream.

Therefore, for at least these additional reasons, Appellants respectfully submit that the Examiner's rejection of Claims 4, 13, 24 and 33 under 35 U.S.C. § 103(a) over *Bruno* is improper.

IV. The Examiner's Rejection of Claims 3, 12, 23 and 32 Under 35 U.S.C. § 103(a) Over Bruno in View of Casper is Improper

As noted above, the Examiner rejects Claim 3 under 35 U.S.C. §103(a) as being unpatentable over *Bruno* in view of *Casper*. In addition, the Examiner references an August 13, 2003 Office Action which rejects Claims 12, 23 and 32 under the same rationale used to reject Claim 3. See Final Office Action, pages 6-7. Claims 3, 12, 23 and 32 depend from Claims 1, 10, 21 and 30, respectively. As discussed above, the Examiner's rejection of Claims 1, 21 and 30 under 35 U.S.C. § 103(a) over *Bruno* is improper. In addition, as discussed below, the Examiner's rejection of Claim 10 under 35 U.S.C. § 103(a) over *Bruno* in view of *Biggs* is improper. Therefore, for the reasons given with respect to Claims 1, 10, 21 and 30, Appellants respectfully submit that the Examiner's rejection of Claims 3, 12, 23 and 32 under 35 U.S.C. § 103(a) over *Bruno* in view of *Casper* is improper.

Moreover, in rejecting these claims, the Examiner merely references a portion of *Casper* that the Examiner alleges includes the missing element and makes a conclusory "it would have been obvious" to combine statement without citing to any portion of any prior art as motivation for the combination. *See* Office Action Mailed August 13, 2003, pages 4-5. The Examiner has not shown the requisite proof necessary to establish a proper motivation to combine the cited references. For at least this additional reason, Appellants respectfully submit that the Examiner's rejection of Claims 3, 12, 23 and 32 is improper.

V. The Examiner's Rejection of Claims 5, 14, 25 and 34 Under 35 U.S.C. § 103(a) Over Bruno in View of Logston is Improper

As noted above, the Examiner rejects Claim 5 under 35 U.S.C. §103(a) as being unpatentable over *Bruno* in view of *Logston*. In addition, the Examiner references an August 13, 2003 Office Action which rejects Claims 14, 25 and 34 under the same rationale used to reject Claim 5. *See* Final Office Action, pages 6-7. Claims 5, 14, 25 and 34 depend from Claims 1, 10, 21 and 30, respectively. As discussed above, the Examiner's rejection of Claims 1, 21 and 30 under 35 U.S.C. § 103(a) over *Bruno* is improper. In addition, as discussed below, the Examiner's rejection of Claim 10 under 35 U.S.C. § 103(a) over *Bruno* in view of *Biggs* is improper. Therefore, for the reasons given with respect to Claims 1, 10, 21 and 30, Appellants respectfully submit that the Examiner's rejection of Claims 5, 14, 25 and 34 under 35 U.S.C. § 103(a) over *Bruno* in view of *Logston* is improper.

Moreover, in rejecting these claims, the Examiner merely references a portion of *Logston* that the Examiner alleges includes the missing element and makes a conclusory "it would have been obvious" to combine statement without citing to any portion of any prior art as motivation for the combination. *See* Office Action Mailed August 13, 2003, page 5. The Examiner has not shown the requisite proof necessary to establish a proper motivation to combine the cited references. For at least this additional reason, Appellants respectfully submit that the Examiner's rejection of Claims 5, 14, 25 and 34 is improper.

VI. The Examiner's Rejection of Claims 6, 15, 26 and 35 Under 35 U.S.C. § 103(a) Over Bruno in View of Roy is Improper

The Examiner rejects Claim 6 under 35 U.S.C. §103(a) as being unpatentable over *Bruno* in view of *Roy*. In addition, the Examiner references an August 13, 2003 Office Action which rejects Claims 15, 26 and 35 under the same rationale used to reject Claim 6. See Final Office Action, pages 6-7. Claims 6, 15, 26 and 35 depend from Claims 1, 10, 21 and 30, respectively. As discussed above, the Examiner's rejection of Claims 1, 21 and 30 under 35 U.S.C. § 103(a) over *Bruno* is improper. In addition, as discussed below, the Examiner's rejection of Claim 10 under 35 U.S.C. § 103(a) over *Bruno* in view of *Biggs* is improper. Therefore, for the reasons given with respect to Claims 1, 10, 21 and 30, Appellants respectfully submit that the Examiner's rejection of Claims 6, 15, 26 and 35 under 35 U.S.C. § 103(a) over *Bruno* in view of *Roy* is improper.

VII. The Examiner's Rejection of Claims 7, 10, 16, 27 and 36 Under 35 U.S.C. § 103(a) Over Bruno in View of Biggs is Improper

As noted above, the Examiner rejects Claims 7 and 10 under 35 U.S.C. §103(a) as being unpatentable over *Bruno* in view of *Biggs*. In addition, the Examiner references an August 13, 2003 Office Action which rejects Claims 16, 27 and 36 under the same rationale used to reject Claim 7. See Final Office Action, pages 6-7.

In rejecting Claim 10, the Final Office Action applies *Bruno* in a similar manner as used in the rejection of Claim 1. See Final Office Action, page 7. Therefore, for the reasons given with respect to Claim 1, Appellants respectfully submit that the Examiner's rejection of Claim 10 over *Bruno* in view of *Biggs* is improper.

In addition, Claims 7, 16, 27 and 36 depend from Claims 1, 10, 21 and 30, respectively. Therefore, for the reasons given with respect to Claims 1, 10, 21 and 30, Appellants respectfully submit that the Examiner's rejection of Claims 7, 16, 27 and 36 under 35 U.S.C. § 103(a) over *Bruno* in view of *Biggs* is improper.

Moreover, in rejecting these claims, the Examiner merely references a portion of *Biggs* that the Examiner alleges includes the missing element and makes conclusory "it would have been obvious" to combine statements without citing to any portion of any prior art as motivation for the combination. *See* Office Action Mailed August 13, 2003, page 7. The Examiner has not shown the requisite proof necessary to establish a proper motivation to combine the cited references. For at least this additional reason, Appellants respectfully submit that the Examiner's rejection of Claims 7, 10, 16, 27 and 36 is improper.

VIII. The Examiner's Rejection of Claims 17-18 Under 35 U.S.C. § 103(a) Over *Bruno* is Improper

The Examiner references an August 13, 2003 Office Action which rejects Claims 17-18 under the same rationale used to reject Claims 8-9. *See* Final Office Action, page 6. Claims 17-18 each depends from Claim 10. Therefore, for the reasons given with respect to Claim 10, Appellants respectfully submit that the Examiner's rejection of Claims 17-18 under 35 U.S.C. § 103(a) over *Bruno* is improper.

IX. The Examiner's Rejection of Claims 19 and 20 Under 35 U.S.C. § 103(a) Over *Bruno* in View of *Biggs* and Further in View of *Wu* is Improper

The Examiner rejects Claims 19 and 20 under 35 U.S.C. §103(a) as being unpatentable over *Bruno* in view of *Biggs* and further in view of *Wu*. Claims 19-20 depend from Claim 10. As discussed above, the Examiner's rejection of Claim 10 under 35 U.S.C. § 103(a) over *Bruno* in view of *Biggs* is improper. Therefore, for the reasons given with respect to Claim 10, Appellants respectfully submit that the Examiner's rejection of Claims 19-20 under 35 U.S.C. § 103(a) over *Bruno* in view of *Biggs* and further in view of *Wu* is improper.

Conclusion

Appellants have demonstrated that the present invention, as claimed, is clearly distinguishable over the prior art cited by the Examiner. Therefore, Appellants respectfully request the Board of Patent Appeals and Interferences to reverse the Examiner's final rejection of the pending claims and instruct the Examiner to issue a notice of allowance of all pending claims.

Appellants have enclosed a check in the amount of \$500.00 for this Appeal Brief. Appellants believe no additional fees are due. The Commissioner is hereby authorized to charge any fee and credit any overpayment to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,

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Appendix A: Claims on Appeal

1. (Previously Presented) A method for allocating a plurality of call resources during a conference call, the method comprising:
 - conducting a conference call between three or more clients using a first call resource;
 - identifying a second call resource available to conduct the conference call; and
 - transferring the conference call from the first call resource to the second call resource without suspending communication of a plurality of mixed media streams received by the clients.
2. (Original) The method of Claim 1, wherein transferring comprises:
 - generating a first mixed media stream at the first call resource and a second mixed media stream at the second call resource;
 - modifying synchronization information in the second mixed media stream to match synchronization information in the first mixed media stream;
 - terminating the first mixed media stream to end communication with the first call resource upon confirming that the modified second mixed media stream is valid; and
 - communicating the modified second mixed media stream to the clients.
3. (Original) The method of Claim 2, further comprising introducing a delay in a selected one of the first mixed media stream and the second mixed media stream to synchronize the first mixed media stream and the second mixed media stream.
4. (Original) The method of Claim 2, wherein modifying synchronization information comprises:
 - instructing the second call resource to adjust synchronization information in the second mixed media stream; and
 - receiving the second mixed media stream with the adjusted synchronization information.
5. (Original) The method of Claim 2, wherein synchronization information comprises at least a selected one of a timestamp and a sequence number.

6. (Original) The method of Claim 2, wherein:
the first mixed media stream comprises a first sequence of real-time transport protocol (RTP) packets;
the second mixed media stream comprises a second sequence of RTP packets; and
the modified second mixed media stream is valid when the second sequence of RTP packets matches the first sequence of RTP packets.

7. (Original) The method of Claim 1, wherein the clients are unaware of the transfer of the conference call from the first call resource to the second call resource.

8. (Previously Presented) The method of Claim 1, wherein:
conducting the conference call comprises:
communicating, to the first call resource, a first media stream generated by one of the clients participating in the conference call; and
communicating, to the one of the clients, a first mixed media stream received from the first call resource; and
transferring the conference call comprises:
duplicating the first media stream to create a second media stream;
communicating the second media stream to the second call resource;
receiving a second mixed media stream from the second call resource;
terminating the first mixed media stream to end communication with the first call resource upon confirming that a modified second mixed media stream is valid; and
communicating the modified second mixed media stream to the one of the clients.

9. (Original) The method of Claim 8, further comprising:
instructing the second call resource to adjust synchronization information in the second mixed media stream; and
receiving the second mixed media stream with the adjusted synchronization information.

10. (Previously Presented) A communication system, comprising:
three or more clients operable to couple to a packet-based network, the clients further operable to initiate or join a conference call;
a first call resource operable to couple to the packet-based network;
a second call resource operable to couple to the packet-based network at a different physical location than the first call resource; and
a media gateway operable to couple to the packet-based network, the media gateway further operable to transfer the conference call from the first call resource to the second call resource without suspending communication of a plurality of mixed media streams received by the clients.

11. (Original) The communication system of Claim 10, wherein:
the first call resource is further operable to generate a first mixed media stream;
the second call resource is further operable to generate a second mixed media stream;
and
the media gateway is further operable to:
modify synchronization information in the second mixed media stream to match synchronization information in the first mixed media stream;
terminate the first mixed media stream to end communication with the first call resource upon confirming that the modified second mixed media stream is valid; and
communicate the modified second mixed media stream to the clients.

12. (Original) The communication system of Claim 11, wherein the media gateway is further operable to introduce a delay in a selected one of the first mixed media stream and the second mixed media stream to synchronize the first mixed media stream and the second mixed media stream.

13. (Original) The communication system of Claim 11, wherein the media gateway modifies synchronization information by:

instructing the second call resource to adjust synchronization information in the second mixed media stream; and

receiving the second mixed media stream with the adjusted synchronization information.

14. (Original) The communication system of Claim 11, wherein the synchronization information comprises at least a selected one of a timestamp and a sequence number.

15. (Original) The communication system of Claim 11, wherein the first mixed media stream comprises a first sequence of real-time transport protocol (RTP) packets;

the second mixed media stream comprises a second sequence of RTP packets; and

the modified second mixed media stream is valid when the second sequence of RTP packets matches the first sequence of RTP packets.

16. (Original) The communication system of Claim 10, wherein the clients are unaware of the transfer of the conference call from the first call resource to the second call resource.

17. (Previously Presented) The communication system of Claim 10, wherein: one of the clients participating in the conference call is operable to communicate a first media stream to the first call resource;

the first call resource is further operable to communicate a first mixed media stream to the one of the clients; and

the media gateway is further operable to:

duplicate the first media stream to create a second media stream;

communicate the second media stream to the second call resource;

receive a second mixed media stream from the second call resource;

terminate the first mixed media stream to end communication with the first call resource upon confirming that a modified second mixed media stream is valid; and
communicate the modified second mixed media stream to the one of the clients.

18. (Original) The communication system of Claim 17, wherein the media gateway is further operable to:

instruct the second call resource to adjust synchronization information in the second mixed media stream; and

receive the second mixed media stream with the adjusted synchronization information.

19. (Original) The communication system of Claim 10, wherein the plurality of clients are selected from a group consisting essentially of a conventional telephone coupled to the packet-based network via a gateway, a wireless phone coupled to the packet-based network via the gateway, an Internet Protocol (IP) phone or a computer including a voice teleconferencing application.

20. (Original) The communication system of Claim 10, wherein the packet-based network comprises an Internet Protocol (IP) network.

21. (Previously Presented) A media gateway, comprising:

an interface operable to couple to a communication network, the interface further operable to receive media streams communicated by three or more clients participating in a conference call; and

a processing module coupled to the interface, the processing module operable to transfer the conference call from a first call resource to a second call resource without suspending communication of a plurality of mixed media streams received by the clients.

22. (Original) The media gateway of Claim 21, wherein the processing module is further operable to:

receive a first mixed media stream generated by the first call resource and a second mixed media stream generated by the second call resource;

modify synchronization information in the second mixed media stream to match synchronization information in the first mixed media stream;

terminate the first mixed media stream to end communication with the first call resource upon confirming that the modified second mixed media stream is valid; and

communicate the modified second mixed media stream to the clients.

23. (Original) The media gateway of Claim 22, wherein the processing module is further operable to introduce a delay in a selected one of the first mixed media stream and the second mixed media stream to synchronize the first mixed media stream and the second mixed media stream.

24. (Original) The media gateway of Claim 22, wherein the processing module modifies synchronization information by:

instructing the second call resource to adjust synchronization information in the second mixed media stream; and

receiving the second mixed media stream with the adjusted synchronization information.

25. (Original) The media gateway of Claim 22, wherein the synchronization information comprises at least a selected one of a timestamp and a sequence number.

26. (Original) The media gateway of Claim 22, wherein:

the first mixed media stream comprises a first sequence of real-time transport protocol (RTP) packets;

the second mixed media stream comprises a second sequence of RTP packets; and

the modified second mixed media stream is valid when the second sequence of RTP packets matches the first sequence of RTP packets.

27. (Original) The media gateway of Claim 21, wherein the clients are unaware of the transfer of the conference call from the first call resource to the second call resource.

28. (Previously Presented) The media gateway of Claim 21, wherein the processing module is further operable to:

communicate a first media stream generated by one of the clients participating in the conference call to the first call resource;

communicate a first mixed media stream received from the first call resource to the one of the clients;

duplicate the first media stream to create a second media stream;

communicate the second media stream to the second call resource;

receive a second mixed media stream from the second call resource;

terminate the first mixed media stream to end communication with the first call resource upon confirming that a modified second mixed media stream is valid; and

communicate the modified second mixed media stream to the one of the clients.

29. (Original) The media gateway of Claim 28, wherein the processing module is further operable to:

instruct the second call resource to adjust synchronization information in the second mixed media stream; and

receive the second mixed media stream with the adjusted synchronization information.

30. (Previously Presented) Logic encoded in media for allocating a plurality of call resources during a conference call and operable to perform the following steps:

conducting a conference call between three or more clients using a first call resource;

identifying a second call resource available to conduct the conference call; and

transferring the conference call from the first call resource to the second call resource without suspending communication of a plurality of mixed media streams received by the clients.

31. (Original) The logic encoded in media of Claim 30, wherein transferring comprises:

generating a first mixed media stream at the first call resource and a second mixed media stream at the second call resource;

modifying synchronization information in the second mixed media stream to match synchronization information in the first mixed media stream;

terminating the first mixed media stream to end communication with the first call resource upon confirming that the modified second mixed media stream is valid; and

communicating the modified second mixed media stream to the clients.

32. (Original) The logic encoded in media of Claim 31, further comprising introducing a delay in a selected one of the first mixed media stream and the second mixed media stream to synchronize the first mixed media stream and the second mixed media stream.

33. (Original) The logic encoded in media of Claim 31, wherein modifying synchronization information comprises:

instructing the second call resource to adjust synchronization information in the second mixed media stream; and

receiving the second mixed media stream with the adjusted synchronization information.

34. (Original) The logic encoded in media of Claim 31, wherein synchronization information comprises at least a selected one of a timestamp and a sequence number.

35. (Original) The logic encoded in media of Claim 31, wherein:

the first mixed media stream comprises a first sequence of real-time transport protocol (RTP) packets;

the second mixed media stream comprises a second sequence of RTP packets; and

the modified second mixed media stream is valid when the second sequence of RTP packets matches the first sequence of RTP packets.

36. (Original) The logic encoded in media of Claim 30, wherein the clients are unaware of the transfer of the conference call from the first call resource to the second call resource.

37. (Previously Presented) The logic encoded in media of Claim 30, wherein:
conducting the conference call comprises:

communicating, to the first call resource, a first media stream generated by one of the clients participating in the conference call; and

communicating, to the one of the clients, a first mixed media stream received from the first call resource; and

transferring the conference call comprises:

duplicating the first media stream to create a second media stream;

communicating the second media stream to the second call resource;

receiving a second mixed media stream from the second call resource;

terminating the first mixed media stream to end communication with the first call resource upon confirming that a modified second mixed media stream is valid; and

communicating the modified second mixed media stream to the clients.

38. (Original) The logic encoded in media of Claim 37, further comprising:

instructing the second call resource to adjust synchronization information in the second mixed media stream; and

receiving the second mixed media stream with the adjusted synchronization information.

39. (Previously Presented) An apparatus for allocating a plurality of call resources during a conference call, comprising:

means for conducting a conference call between three or more clients using a first call resource;

means for identifying a second call resource available to conduct the conference call;
and

means for transferring the conference call from the first call resource to the second call resource without suspending communication of a plurality of mixed media streams received by the clients.

40. (Original) The apparatus of Claim 39, further comprising:

means for generating a first mixed media stream at the first call resource and a second mixed media stream at the second call resource;

means for modifying synchronization information in the second mixed media stream to match synchronization information in the first mixed media stream;

means for terminating the first mixed media stream to end communication with the first call resource upon confirming that the modified second mixed media stream is valid; and

means for communicating the modified second mixed media stream to the clients.

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Appendix B: Evidence

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Appendix C: Related Proceedings

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